

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 1405 OF 1991

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

KADARI ZAKIR HUSSEIN ABDULMIYA

VERSUS

INDRAVADAN J. DESAI & ANR.

Appearance:

MR GM JOSHI for the Petitioner

None present for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 18/11/1999

C A V JUDGMENT

#. The petitioner by this petition under Article 226 of the Constitution of India seeks to challenge legality and validity of the oral order whereby his services have been terminated and also the action of the respondents in preventing him from resuming his duties as daily wager

Octroi Clerk and also seeks to challenge the action of the respondents in not regularising his services as confirmed in the permanent set up of the respondents as being bad in law, illegal, arbitrary, unconstitutional and violation of the Constitutional guarantees enshrined upon the petitioner.

#. The facts of the case are that the petitioner was appointed as daily wager Octroi Clerk at the salary of Rs.14.50 per day in the year 1986 by the respondents. Since then the petitioner was working with the respondents subject to few artificial breaks. The petitioner possess the qualifications of SSC with 61% marks and has also completed F.Y. B.Com. but could not prosecute further studies as he is coming from down trodden society and because of financial constraints. In the month of November, 1984, his services were terminated. He was not paid wages for the months of April, June, July, September, October and 22 days of November, 1989. In the month of November, 1990 he was taken back in the service and had continued to work under the respondents subject to few artificial breaks given by them. The grievance is made by the petitioner that without any cause or reason much less any justification, by an oral order dated 17/1/1991 his services were brought to an end and for 17 days he had also not paid the salary. Hence this Special Civil application before this court.

#. In the Special Civil Application, the petitioner prays for the following reliefs :-

(A) YOUR LORDSHIPS be pleased to quash and set aside the oral order of termination of the petitioner's services as daily-wager octroi clerk as being bad in law, illegal, arbitrary, unconstitutional and violative of principles of 'Last come, first go', by issuing a writ of mandamus or any other appropriate writ, order or direction of this Hon'ble High Court;

(B) YOUR LORDSHIPS be pleased to quash and set aside the action of the respondents in not regularising the services of the petitioner as Octroi clerk and continuing the petitioner as octroi clerk for number of years with a view to deprive the petitioner the status, benefits and the privileges of permanent employees, as

being bad in law, illegal, arbitrary, unconstitutional, by issuing a writ of mandamus or any other appropriate writ, order or direction of this Hon'ble Court;

(C) YOUR LORDSHIPS be pleased to quash and set aside the action of the respondents in denying the salary as is being paid to the permanent employees working as Octroi Clerk under the respondents as against the daily wages being paid to the petitioner at the rate of Rs.28-per day, as being arbitrary, illegal, bad in law, violative of constitutional guarantees enshrined upon the petitioner, not in consonance with the principles laid down by the Hon'ble Supreme Court of India in the case of Randhirsingh, reported in AIR 1982 SC 879 and the principles laid down by the Hon'ble Supreme Court in the cases reported in AIR 1988 SC 1291, 1970, AIR 1987 SC 2049 and also in violation of principles of 'equal pay for equal work, by issuing a writ of mandamus or any other appropriate writ, order or direction of this Hon'ble High Court;

(D) YOUR LORDSHIPS be pleased to declare that the petitioner is entitled to the same pay-scale that is being paid to permanent employees working as octroi clerks under the respondents from the date of the petitioner's joining the services of the respondents alongwith all consequential benefits and arrears of pay in the said pay-scale as against the salary that was being paid to the petitioner at the rate of Rs.28 per day, by issuing a writ of mandamus or any other appropriate writ, order or direction of this Hon'ble High Court;

(E) YOUR LORDSHIPS be pleased to direct the respondents not to prevent the petitioner from discharging his duties as daily-wager octroi clerk pending final disposal of this petition;

(F) YOUR LORDSHIPS be pleased to direct the respondents to forthwith permit the petitioner to attend to his duties as

daily wager octroi clerk with continuity of service and to draw his salaries accordingly, pending the final disposal of this petition;

4. This petition was placed on board for preliminary hearing on 7.3.1991. The court has ordered;

"Rule. To be heard with Spl.C.A.No.1016/87 and allied matters. So far as interim relief is concerned, the respondents are directed to permit the petitioner without prejudice to the rights and contentions of both the sides, to resume duty as daily wager octroi clerk. Notice as to interim relief returnable on 26.3.91.

D.S.Permitted."

5. This Special Civil Application has been contested by the respondent No.1 who has filed detailed reply to the same. But it is a different matter that nobody is present to make submissions in this case on his behalf.

6. Learned counsel for the petitioner contended that, the petitioner has been appointed after his name was sponsored from the Employment Exchange Office and duly selected for the post of Octroi Clerk. His appointment was regular appointment, though it is a different matter that he was given appointment on daily wages.

7. It has next been contended that, services of the petitioner were terminated though the persons who were juniors to him were retained in the services.

8. It is further contended that, from time to time the work for the petitioner was available and he has continuously worked on the post with artificial break. The respondents are under legal obligation to regularise the services of the petitioner and to extend him all the benefits which are being given to the permanent employees.

9. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

10. In the Special Civil Application No.5913/90, notice was issued on 13.8.1990. In this Special Civil

Application the petitioners prayed for the following reliefs.:

- (A) Your Lordship be pleased to admit this petition;
- (B) Your Lordship be pleased to quash and set aside the action of the respondents in terminating the services of the petitioners from October, 1989 as being one taken without following proper procedure of law and issue a writ of mandamus or any other appropriate writ order or direction directing the respondents to call the petitioners on duty as Daily Wagers/Muster clerks.
- (C) Pending admission, hearing and final disposal of this petition, Your Lordship be pleased to direct the respondent authorities to pay the salaries for the months of April, June, July, September, October and 22 days of November, 1989 forthwith.
- (D) Your Lordship be pleased to grant any other and further reliefs as are deemed fit in the interest of justice.

On 31.8.1990 this court had ordered;

"Respondents though served do not appear. In view of the averments in para 5 of the petition, interim relief in terms of para 12(C). If the interim order is not complied with, the first respondent to remain personally present in this court on 10.9.90. D.S. S.O. to 10.9.90."

Interim relief has been granted in terms of para 2(C), meaning thereby the order of the respondents terminating the services of the petitioners has not been stayed.

11. On 9.9.1991 this petition was rejected. The order of the court of the date aforesaid reads as under.:

"The petitioner has now shown willingness to make a representation to the respondent municipality and on behalf of the respondent, L.A. Shri A.D.Oza has promptly stated that as and when the representation is received it will be duly considered. Hence the petition does not survive. Hence it is rejected. Notice discharged."

12. Averments made by the petitioner that Special

Civil Application No.5913/90 is still pending is not correct. This petition has been dismissed by specific order of this court. From this fact it is clearly born out that from November, 1989 the petitioner was not in services of the respondents. In November, 1990 as per the petitioner's own case he was taken back in the services, but that services were also brought to an end under the order dated 17.1.1991. This court has ordered for hearing the petition with Special Civil Application No.1016/87 and allied matters. Interim relief has been granted to the extent that the respondents were permitted to take the petitioner on daily wages. It is not known whether the petitioner is still continued in the services or not, but even if it is taken that he is continued in the services, his continuation was under the interim order of this court and certainly he was daily wagger servant.

13. Learned counsel for the petitioner though contended that the petitioner was appointed after the selection, but I do not find anything on the record of this Special Civil Application in support of this contention. It is a case where on daily wages for fixed term the petitioner has been appointed as Octroi Clerk. His services were brought to an end in November, 1989 and that action of the respondents was not declared to be illegal or contrary to law by this court, though the same has been challenged by the petitioner in Special Civil Application No.5913/90 which ultimately rejected. The petitioner then was taken back in the services in the month of November, 1990 and hardly for a few months he worked, thereafter, his services were brought to an end. In view of these facts, it is difficult to accept any of the claim of the petitioner made in this Special Civil Application. The petitioner was daily wagger and as and when the work was available, he was given the work, but, merely by this act of the respondents, he cannot be taken to be a permanent employee or duly selected and substantially appointed employee. His status continued to be only a daily wagger and it does not confer any right of permanency upon him. This daily wages appointment in fact comes to an end on the date itself. Only on this basis, there cannot be any directions to the respondents to regularise the services of the appointee and to give all the benefits of permanency. In case this course is adopted, it will result in appointment in the office of the respondents dehors the Recruitment Rules. Even, if it is taken that Recruitment Rules are not there, regularisation if any ordered of the petitioner, it will contrary to the provisions of Articles 14 and 16 of the Constitution of India.

14. It is not the case of the petitioner that post on which he was appointed was sanctioned post. It appears to be a case where some officers of the respondents have favoured their own persons and though sanctioned posts were not available, he was appointed on daily wages. This matter was ordered to be heard with Special Civil Application No.1016/87 which is already decided. Issue involved in that petition was also there in the Special Civil Application No.1974/85 which has been decided by this court on 19.12.1997 and the same was dismissed.

15. Facts of this are not distinguishable from the facts of Special Civil Application No.1974/85. This matter is squarely covered by the decision of the court in Special Civil Application No.1974/85 and as a result of the same, no relief can be granted to the petitioner as prayed in this Special Civil Application.

16. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

(S.K.Keshote,J.)

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